

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART, *Pro Se* :
:
Plaintiff :
:
:
v. : Civil Action No. 12-CV-0415
:
U.S. DEPARTMENT OF HOUSING :
AND URBAN DEVELOPMENT, *et al.* :
:
Defendants :
:

ORDER

AND NOW this _____ day of _____, 2013, upon consideration of federal defendants' motion to stay discovery, and any response thereto, it is hereby ORDERED that federal defendants' motion is GRANTED. Discovery is hereby stayed pending the outcome of the government's motion to dismiss Taggart's claim of a due process violation.

BY THE COURT:

HONORABLE J. WILLIAM DITTER, JR.
Senior Judge, United States District Court

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FEDERAL DEFENDANTS' MOTION TO STAY DISCOVERY

Federal defendants, by and through their undersigned counsel, hereby respectfully request a stay of discovery pending the outcome of the government's motion to dismiss Taggart's claim of a violation of his right to due process. The reasons for this motion are set forth in the accompanying memorandum of law.

Respectfully submitted,

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United States Attorney

Margaret L. Hutchinson
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

Susan Dein Bricklin
SUSAN DEIN BRICKLIN
Assistant United States Attorney

Dated: 2/1/13

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FEDERAL DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION TO STAY DISCOVERY

Plaintiff, a *pro se* litigant, has recently filed discovery, including interrogatories, requests for production of documents and requests for admissions. Federal defendants hereby request a stay of discovery pending the outcome of federal defendant's motion to dismiss.

Plaintiff filed his initial complaint in this matter against GMAC Mortgage and the United States Department of Housing and Urban Development.¹ The Court granted federal defendant's initial motion to dismiss leaving only the issue raised by Taggart that he suffered a "due process violation based on the adequacy of his conference." prior to his removal from the Appraiser's Roster. (P. 8 of this Court's opinion of Nov. 26, 2012). A motion to dismiss on that issue has been filed by the federal defendant, and is pending.

Taggart has sent discovery to federal defendant, including requests for admissions. Discovery, at this time, is not appropriate, and defendant requests a stay of discovery. There has been no Rule 26(f) conference and no initial disclosures. Rule 26 (d) of the Federal Rules of Civil Procedure requires that "A party may not seek discovery from any source before

¹ Plaintiff subsequently filed two amended complaints against the same defendants.

the parties have conferred as required by Rule 26(f), except...when authorized...by court order.”

Thus, at this time, plaintiff’s discovery is premature.

In addition, with a motion to dismiss pending, federal defendant requests that all discovery be stayed until that motion is decided by the Court. Courts have discretion whether to stay discovery. See, In re Orthopedic Bone Screw Product Liability Litigation, 264 F.3d 344, 365 (3d Cir. 2001); Texaco v. Borda, 383 F.2d 607, 608 (3d Cir. 1967). The Third Circuit has held, citing to Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009), that “in certain circumstances it may be appropriate to stay discovery while evaluation of a motion to dismiss where, if the motion is granted, discovery would be futile.” Mann v. Brenner, 375 Fed. Appx. 232, 239 (3d Cir. 2010). When deciding the issue of whether a stay of discovery should be granted while a motion to dismiss is pending Courts have concluded that “a stay is proper where the likelihood that such a motion may result in the narrowing or an outright elimination of discovery outweighs the likely harm to be produced by the delay.” 19th Street Baptist Church v. St. Peters Episcopal Church, 190 F.R.D. 345, 349 (E.D. Pa. 2000), citing Weisman v. Mediqa, Inc., 1995 WL 273678 (E.D. Pa. 1995). See also, Mann v. Brenner, 375 Fed. Appx. at 239, citing and quoting Rutman Wine Co. v. E. & J. Gallo Winery, 829 F.2d 729, 738 (9th Cir. 1987) (upholding the District Court’s decision to stay discovery pending the resolution of a 12(b)(6) motion) (“The purpose of F.R.Civ.P 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.”).

In this case discovery should be stayed while the pending motion to dismiss is being considered by the Court. The motion is dispositive. Conducting discovery is wasteful of the federal defendant’s time. Plaintiff has cited no compelling reason - in fact plaintiff has not

requested permission to file discovery - that requires him to take discovery at this time. In similar circumstances many federal courts in Pennsylvania have stayed discovery. See North American Communications, Inc. v. Infoprint Solutions Company, LLC, 2011 WL 4571727 (W.D. Pa.); Kimberly-Clark Worldwide Inc. v. First Quality Baby Products, LLC, 2011 WL 871479 (M.D. Pa.); Anita Wicker et. al. v. Robert Shannon, et. al., 2010 WL 3812351 (M.D. Pa.).

Wherefore, the federal defendant respectfully requests that this Court enter an order staying discovery until such time as the pending motion to dismiss is decided.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

Margaret L. Hutchinson
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

Susan Dein Bricklin
SUSAN DEIN BRICKLIN
Assistant United States Attorney

Dated: 2/1/13

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Federal Defendants' Motion to Stay Discovery to be served by first class mail, postage prepaid, upon the following:

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Pro se plaintiff

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Susan Dein Bricklin
Assistant United States Attorney

Dated: 2/1/13